No. 4585

United States

Circuit Court of Appeals

For the Ninth Circuit.

DAVID PEARLMAN,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filed
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Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES OF ATTORNEYS OF RECORD.

For Defendant and Plaintiff in Error:
EDWARD A. CUNHA, Esq., Flood Building,
San Francisco, California.

For Plaintiff and Defendant in Error:
UNITED STATES ATTORNEY,
San Francisco, California.

In the Southern Division of the United States District Court for the Northern District of California.

Clerk's Office.

No. 11,782.

UNITED STATES OF AMERICA

vs.

DAVID PEARLMAN.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of said Court:

Sir:

Please prepare transcript on writ of error as follows:

1. Indictment.
2. Plea.
3. Minutes of the trial.
4. Verdict.
5. Judgment.
6. Motion new trial.

7. Motion in arrest of judgment.
8. Bill of exceptions.
9. Petition for writ of error.
10. Assignment of errors.
11. Order allowing writ of error.

EDWARD A. CUNHA,
Attorney for Defendant.

[Endorsed]: Filed Apr. 22, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

(INDICTMENT.)

At a stated term of said court begun and holden at the city and county of San Francisco, within and for the Southern Division of the Northern District of California on the second Monday of July in the year of our Lord one thousand nine hundred and twenty-two.

The Grand Jurors of the United States of America, within and for the Division and District aforesaid, on their oaths present: THAT

DAVID PEARLMAN

hereinafter called the defendant, heretofore, to wit, on or about July 28th, 1922, in violation of section 3 of the National Motor Vehicle Act of October 29th,

*Page-number appearing at foot of page of original certified Transcript of Record.

1919, did unlawfully, wilfully, knowingly and feloniously transport, and cause to be transported in interstate commerce, to wit, from the city of New York, in the State of New York, to San Francisco, in the Southern Division of the Northern District of California and into the jurisdiction of this Court, a certain motor vehicle, to wit, a Cadillac automobile, Motor No. 18664, said defendant then and there well knowing that at the time of said transportation, the said motor vehicle had been stolen.

Against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

JOHN T. WILLIAMS,
United States Attorney. [2]

[Endorsed]: A true bill. C. A. Graham, Forman. Presented in Open Court and Ordered Filed Sep. 29, 1922. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [3]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Friday the 10th day of November, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 11,782.

UNITED STATES OF AMERICA,

vs.

DAVID PEARLMAN.

MINUTES OF COURT—NOVEMBER 10, 1922—(ARRAIGNMENT AND PLEA).

In this case the defendant was produced in Court by the U. S. Marshal and with his Attorney, H. Michael, Esq. J. R. Kelly, Esq., Asst. U. S. Atty., was present for and on behalf of the United States. Defendant was duly arraigned upon the indictment filed herein against him, stated his true name to be as contained therein, waived formal reading thereof, and thereupon plead "Not Guilty" of offense charged, which plea the Court ordered entered with leave to defendant to Demur or make such motion as may be desired on or before Nov. 13, 1922. Further ordered case continued to November 25, 1922, to be set for trial; and that defendant, in default of bond as heretofore ordered, stand committed and that mittimus issue.

Page 23, Vol. 58. [4]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 16th day of March, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable A. F. St. SURE, District Judge.

No. 11,782.

UNITED STATES OF AMERICA

vs.

DAVID PEARLMAN.

MINUTES OF COURT—MARCH 16, 1925—TRIAL.

This case came on regularly this day for trial of defendant, David Pearlman, upon indictment filed herein against him. Said defendant was present with Attorney Edw. A. Cunha, Esq. G. J. Fink, Esq., Asst. U. S. Atty., was present for and on behalf of United States. Upon calling of case, all parties answering ready for trial, Court ordered same proceed and that the jury-box be filled from regular panel of trial jurors of this court. Accordingly, the hereinafter named persons, having been duly drawn by lot, sworn, examined and accepted,

were duly sworn as jurors to try the issues herein, viz.

Edw. J. Fowler,	R. O. Wilson
H. W. Robinson,	Robt. F. Behlow,
M. Jacobs,	Herbert E. Clayburgh,
T. W. Harron,	Chas. W. Dahl,
H. J. Fleming,	Al. Hanify,
Albert L. Hart,	C. C. Chamberlin,

Mr. Fink made statement to the Court as to the nature of the case and called certain persons as witnesses on behalf of United States, each of whom was duly sworn and examined, to wit: S. J. Adams, M. L. Britt, Henry R. Leong, W. E. Sutton, W. F. Millikan and J. W. Ehrlich, and introduced in evidence on behalf of United States a certain exhibit which was filed and marked U. S. Exhibit No. 1; and rested. [5]

Mr. Cunha thereupon moved Court for order to instruct jury to return verdict of not guilty. After hearing attorneys, ordered motion denied. Case was thereupon rested on behalf of defendant.

Case was then argued by counsel for respective parties and submitted, whereupon the Court proceeded to instruct the jury herein, who, after being so instructed, retired at 2:55 P. M., to deliberate upon a verdict and subsequently returned into Court at 4:10 P. M., and upon being called all twelve (12) jurors answered to their names and were found to be present. Said jury, after being further instructed, again retired at 4:15 P. M., for further deliberations.

Court ordered that should the jury agree upon a verdict before the reconvening of the court to-morrow morning at 10 o'clock, the verdict as agreed upon and signed by the foreman of the jury shall be placed in an envelope and sealed in the presence of the jury and the same shall thereafter be safely kept by the foreman until the reconvening of the Court to-morrow morning, when the foreman shall deliver the sealed verdict to the Court. In the event a verdict is reached, the same shall be kept secret by each member of the jury until such verdict is returned to the Court. And further, in the event that the jury agree upon a verdict and the same is sealed and kept as aforesaid, the individual jurors may separate and go their several ways until the reconvening of the court as aforesaid. Ordered that, in event jury does not agree within a reasonable time, the U. S. Marshal make proper arrangements for their keeping, together with two bailiffs, for the night. Ordered that said U. S. Marshal furnish said jury and two bailiffs with dinner this date and with breakfast on March 17, 1925, all to be at expense of United States.

On motion of Mr. Cunha and after hearing Mr. Fink, further ordered that the order heretofore entered herein [6] (forfeiting bond for appearance of defendant) be and same is hereby vacated, set aside and held for naught and that said bond be and the same is hereby exonerated. Ordered that defendant in default of new bond stand committed and that mittimus issue. [7]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 17th day of March, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable A. F. St. SURE, District Judge.

No. 11,782.

UNITED STATES OF AMERICA

vs.

DAVID PEARLMAN.

MINUTES OF COURT—MARCH 17, 1925—TRIAL (CONTINUED).

In this case the jury returned into court at 10 A. M. and defendant being present in custody of U. S. Marshal and with his Attorney, E. A. Cunha, Esq., and G. J. Fink, Esq., Asst. U. S. Atty., being present for United States, the jury was called and all twelve (12) jurors answered to their names and were found to be present and, in answer to question of the Court, stated they had agreed upon a Verdict and presented a written verdict which the Court ordered filed and recorded, viz.: "We, the Jury, find David Pearlman the defendant at the bar Guilty. Herbert E. Clayburgh, Foreman."

Court ordered jurors discharged from further consideration of this case.

After hearing attorneys, defendant was called for judgment. Defendant was duly informed by the Court of the nature of the indictment filed herein against him, of his arraignment and plea, trial and verdict of jury. Defendant was then asked if he had any legal cause to show why judgment should not be entered and thereupon Mr. Cunha moved Court for order allowing new trial, which motion the Court ordered denied and to which order an exception was entered. Mr. Cunha then [8] made a motion in arrest of judgment, which motion the Court likewise ordered denied and to which order an exception was entered.

On motion of Mr. Cunha, further ordered that exception be entered on behalf of defendant to order denying defendant's motion for order instructing jury to return verdict of not guilty.

Thereupon, no sufficient cause appearing why judgment should not be pronounced, the Court ordered that defendant David Pearlman, for offense of which he stands convicted, be imprisoned for 5 years in U. S. Penitentiary at Leavenworth, Kansas, and that said defendant stand committed to custody of U. S. Marshal for this district to execute said judgment of imprisonment, and that a commitment issue. Ordered that said judgment of imprisonment commence and run from date hereof, provided defendant be not released from custody pending determination of writ of error or appeal herein.

On motion of Mr. Cunha, further ordered that said defendant be not removed from jurisdiction of this Court for period of ten (10) days. [9]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 11,782.

THE UNITED STATES OF AMERICA

vs.

DAVID PEARLMAN.

(VERDICT.)

We, the jury, find David Pearlman, the defendant at the bar, guilty.

HERBERT E. CLAYBURGH,
Foreman.

[Endorsed]: Filed March 17, 1925, at 10 o'clock A. M. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [10]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 11,782.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DAVID PEARLMAN,
Defendant.

MOTION FOR A NEW TRIAL.

Now comes David Pearlman, defendant in the above-entitled cause and moves the Court to set aside the verdict herein and grant a new trial of said cause, and for reasons therefor shows to the Court the following:

I.

That said verdict in said cause is contrary to law.

II.

That said verdict in said cause is contrary to the evidence.

III.

That the evidence in said cause is insufficient to justify or support said verdict.

IV.

That the Court misdirected the jury in matters of law, and improperly instructed the jury to defendant's prejudice.

V.

That the Court erred upon the trial of said cause in deciding questions of law arising during the course of said trial, which errors were duly excepted to.

Dated and made in open court this 17th day of [11] March, 1925.

EDWARD A. CUNHA,
Attorney for Defendant.

[Endorsed]: Service of copy admitted this 26th day of March, 1925.

GROVE J. FINK,
Asst. U. S. Atty.

Filed Mar. 26, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [12]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

No. 11,782.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID PEARLMAN,

Defendant.

MOTION IN ARREST OF JUDGMENT.

Now comes the above-named defendant and moves the Court that no judgment be rendered on the verdict of guilty returned in the above-entitled cause, and that judgment on said verdict be arrested, and that said verdict be set aside and declared null and void for each of the following causes and reasons:

I.

That the indictment returned and filed herein does not charge or state facts sufficient to constitute a public offense, or any offense against the laws of the United States of America.

II.

That this Court has no jurisdiction to pass judgment upon said defendant by reason of the fact that said indictment on file herein does not state or

charge facts sufficient to constitute a public offense under the laws of the United States of America.

Dated and made in open court the 17th day of March, 1925.

EDWARD A. CUNHA,
Attorney for Defendant. [13]

[Endorsed]: Service of copy admitted this 26th day of March, 1925.

GROVE J. FINK,
Asst. U. S. Atty.

Filed Mar. 26, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [14]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 11,782.

Transporting stolen automobile in interstate commerce in violation Sec. 3 Act of Oct. 29, 1919 (Motor Vehicle Theft Act).

THE UNITED STATES OF AMERICA

vs.

DAVID PEARLMAN.

JUDGMENT ON VERDICT OF GUILTY.

Grove J. Fink, Esq., Assistant United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by

the Court of the nature of the indictment filed on the 29th day of September, 1922, charging him with the crime of transporting stolen automobile in interstate commerce in violation Sec. 3 Act of Oct. 29, 1919 (Motor Vehicle Theft Act) of his arraignment and plea of not guilty; of his trial and the verdict of the jury on the 17th day of March, 1925, to wit:

"We, the Jury find David Pearlman the defendant at the bar Guilty.

HERBERT E. CLAYBOURGH,
Foreman."

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judgment; thereupon the Court rendered its judgment; THAT WHEREAS, the said David Pearlman having been duly convicted in this Court of the crime of transporting stolen automobile in interstate commerce in violation of Sec. 3 Act of Oct. 29, 1919 (Motor Vehicle Theft Act). [15]

IT IS THEREFORE ORDERED AND ADJUDGED that the said David Pearlman be imprisoned for the period of five (5) years in the United States Penitentiary at Leavenworth, Kansas. Term of imprisonment to commence and run from date hereof, providing defendant be not released from custody pending determination of appeal or Writ of Error herein.

Judgment entered this 17th day of March A. D. 1925.

WALTER B. MALING,
Clerk.
By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 18, Judg. and Decrees, at page 334. [16]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 11,782.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DAVID PEARLMAN,
Defendant.

BILL OF EXCEPTIONS.

BE IT REMEMBERED that heretofore and on the 29th day of September, 1922, the grand jurors of the United States of America, within and for the division and district aforesaid, presented and filed in the above-entitled court an indictment against the said defendant, David Pearlman, charging said defendant with the violation, on or about July 28th, 1922, of Section III of the National Motor Vehicle Act of October 29th, 1919; that thereafter and on the 10th day of November, 1922, the said defendant,

appeared in open court, and was arraigned upon said indictment, and upon being called upon to plead to said indictment, pleaded "Not Guilty," as shown by the records herein; and the cause being at issue, the trial of said cause by the order of the Court duly given and made was set for the 16th day of March, 1925, and the said cause came on for trial before said court on Monday the 16th day of March, 1925, before the Honorable A. F. St. Sure, District Judge of said court, the United States being represented by Grove L. Fink, Esq., Assistant United States Attorney-General, and the defendant being represented by Edward A. Cunha, Esq.; and thereupon the jury was selected and impanelled and sworn to try the said cause, and thereupon the plaintiff to maintain the issues on its part to be maintained, introduced and offered in evidence the following testimony, and none other, to wit: [17]

TESTIMONY OF S. J. ADAMS, FOR THE GOVERNMENT.

Testimony of S. J. ADAMS called for the United States, sworn.

Mr. FINK.—Q. Mr. Adams, you now reside in the city of Los Angeles and are engaged in the insurance business, I believe; is that correct?

A. Yes.

Q. In the year 1922 what was your occupation, Mr. Adams?

A. I was a special agent of the Department of Justice.

(Testimony of S. J. Adams.)

Q. Where were you stationed?

A. San Francisco.

Q. Operating from the San Francisco office?

A. Yes.

Q. Did you in that year have occasion to investigate the case of the theft of an automobile by one David Pearlman? A. I did.

Mr. CUNHA.—Just a minute. I will object to that question in that form on the ground it assumes something not in evidence, it calls for a conclusion and opinion of the witness, in that he is asked if he was called upon to investigate the theft of an automobile.

The COURT.—Overruled.

Mr. CUNHA.—It assumes that there was such a thing as the theft of an automobile. That is something that must be proved in this case.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. As of about what date did you start the investigation, Mr. Adams?

A. I believe it was September 7, 1922.

Q. September 7? A. About that.

Q. Did you see the defendant in the course of that investigation, David Pearlman? A. I did.

Q. Where? A. At the city prison.

Q. In San Francisco? A. Yes.

Q. Did you have a conversation with him at that time? A. I did.

Q. Now will you relate to the Court and to the jury as near as you now remember it, Mr. Adams,

(Testimony of S. J. Adams.)

the conversation as it relates to the matter in question?

Mr. CUNHA.—Just a moment, if your Honor please, we object to that question upon the ground that it calls for the conclusion and opinion of the witness, on the further ground that it calls for hearsay testimony, upon the further [18] ground that no foundation for the introduction of the testimony has been laid, and particularly if it is sought by the Government to prove any admissions or confessions of this defendant with regard to acts constituting the *corpus delicti* in this case, that the evidence is immaterial, irrelevant, incompetent and hearsay and there has been no foundation laid for it.

The COURT.—Overruled.

Mr. FINK.—Q. Under the ruling of the Court, you may go ahead.

A. Mr. Pearlman stated, when questioned about the ownership of that car that he had purchased the car in New York.

Mr. CUNHA.—If your Honor please, I overlooked the matter of taking my exception to the last ruling. May I have an exception?

The COURT.—Certainly. That may follow all of your objections.

A. (Continuing.) He was asked how he came into possession of the car and he stated that he purchased it in New York from a second-hand auto market at Third Avenue and Thirteenth Street, I believe, if I recall rightly. I asked him exactly who he bought it from and he said he did not know

(Testimony of S. J. Adams.)

the man's name. He stated also that he went to Albany, New York, and secured this license for the automobile, that is, he left the automobile in New York, took a train to Albany, got the license and went back to New York City and drove the car direct to San Francisco with the exception of a stop-over at Salt Lake, claiming that he stopped at the Newhouse Hotel. However, he had a bill of sale for the car that was issued in Los Angeles. That bill of sale was made out by a man by the name of Lewis, I believe, some second-hand auto market there.

Mr. FINK.—Q. Did you see that bill of sale?

Mr. CUNHA.—Now if your Honor please, keeping in mind that perhaps your Honor will direct the order of proof, I make a motion that the testimony of this witness in which he states that the defendant told him that he had driven the car across the continent, anything with regard to driving the car, be stricken from the record on the ground it is immaterial, irrelevant and incompetent, and an attempt to prove the *corpus delicti* in this case by a confession or a statement of the defendant. I take it, if your Honor [19] please, that you have the discretion as to the order of proof, but to prove the *corpus* of the offense by admissions or statements of the defendant, I think it will be conceded it is beyond the law and is an invasion of the rights of this defendant. That is the point that we make, if your Honor please, that finally in this case the *corpus delicti* must be proved—

(Testimony of S. J. Adams.)

The COURT.—I do not want any argument; just state the point fully.

Mr. CUNHA.—We base our motion to strike out all of the testimony given by the witness on all of the grounds heretofore stated.

The COURT.—Motion denied.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. Did you see that bill of sale?

A. Yes.

Q. Where is that bill of sale at this time?

A. I think the last time that I knew of that bill of sale it was in the hands of Mr. Michelson, Mr. Pearlman's attorney at that time.

Q. Where was that bill of sale dated, if you know? A. It was dated at Los Angeles.

Mr. CUNHA.—As far as that bill of sale is concerned, we object to any testimony along this line on the ground it is immaterial and incompetent, and not the best evidence and not binding upon this defendant.

The COURT.—What about that, Mr. Fink?

Mr. FINK.—I take it that if we cannot produce the bill of sale at this time, and the bill of sale is in the possession of the defendant or his attorney, that we can prove it by such secondary evidence that there is available.

The COURT.—You have shown that it is not available.

Mr. FINK.—I withdraw the question.

Q. Did you ever see the bill of sale after you saw it with the defendant?

(Testimony of S. J. Adams.)

A. I do not think I did, Mr. Fink.

Mr. CUNHA.—He just stated that the attorney, Mr. Michelson, had it when he saw it.

Mr. FINK.—He said he thought that Mr. Michelson had it.

Q. Do you know where that bill of sale is now other than the [20] statement you have just made? A. I do not.

Q. Do you know whether it was Mr. Michels or Mr. Michelson who had the bill of sale?

A. Mr. Michels.

Q. Did he represent this defendant at that time?

A. He did.

Q. What was the date of the purchase, the date that the defendant told you he purchased the car in the city of New York, if you remember?

Mr. CUNHA.—We object to that upon all the grounds heretofore stated, and upon the ground it is immaterial, irrelevant and incompetent, calls for hearsay testimony, on the further ground that no foundation for the evidence has been offered or introduced, upon the further ground that all of this testimony with regard to conversations with the defendant or conduct of the defendant with regard to the bill of sale and otherwise in connection with this automobile is merely an attempt to prove the *corpus delicti* in this case by admissions from the defendant or statements from the defendant either by conduct or by actual verbal statements, and it is incompetent.

The COURT.—Overruled.

(Testimony of S. J. Adams.)

Mr. CUNHA.—Exception.

The COURT.—You have several times quite fully stated your objection. It will save time if it is understood or that it be stipulated that your objection goes to the testimony of this witness concerning the conversation or statements made by the defendant to him, and also with regard to anything having to do with bills of sale or anything else about that machine.

Mr. CUNHA.—And may we have our exception?

The COURT.—I am willing that you should.

Mr. FINK.—Read the question. (Question read by the reporter.)

A. I think it was July 28th, if I am not mistaken.

Q. July what? A. July 28.

Q. Did he tell you what date he arrived here—go ahead with your story.

A. He arrived—

Mr. CUNHA.—Just a moment; we object to the question upon the further ground it is immaterial, irrelevant and incompetent and not the proper method of interrogating the witness at all, to tell the witness to go ahead and tell his story. [21]

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. He said he left New York the latter part of July, about the 30th or 29th, I do not quite remember, he said that he got to San Francisco about September 6th.

Mr. CUNHA.—I make a motion to strike out the last answer on the grounds heretofore urged, and

(Testimony of S. J. Adams.)

on the further ground it is immaterial, irrelevant and incompetent.

The COURT.—Denied.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. Have you narrated all the conversation with the defendant which you now remember, Mr. Adams? A. Particularly, yes.

Q. Do you remember a conversation concerning where he had been in the State of California?

A. No, I do not think so, no.

Q. You do not? A. No.

Q. Now, referring again to the bill of sale to which you testified, I will renew the question that I withdrew, do you now remember where the bill of sale was dated? A. Los Angeles.

Mr. CUNHA.—Just a moment, we object to that on the grounds heretofore stated, and on the further ground it is immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Los Angeles.

Mr. FINK.—Q. Do you remember about the date shown on that bill of sale?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. It was dated, I am pretty sure, the 14th of August.

Mr. FINK.—Q. Do you remember the name of the man who signed it?

Mr. CUNHA.—The same objection.

(Testimony of S. J. Adams.)

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. The heading on the stationery was Lewis, I am positive of that. [22]

A. JUROR.—They were talking about a bill of sale. Does that bill of sale show the substituted new number of the motor?

Mr. CUNHA.—We will make our same objection.

Mr. FINK.—I will cover that in subsequent testimony, if the juror will withdraw it—I will cover it in further testimony from a different witness.

Q. Now, Mr. Adams, do you know anything about the motor number on the machine at all?

Mr. CUNHA.—Just a moment, we will object to that question on the ground it is immaterial, irrelevant and incompetent, and upon the further ground that the use of the expression "the machine" is immaterial and refers to any machine; it does not refer to the particular machine in this case.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. I cannot recall the motor number, from the witness-stand.

Mr. FINK.—Q. Well, by the way, what kind of a car was this?

Mr. CUNHA.—Just a moment, I object to that question on the ground it is immaterial, irrelevant and incompetent, and does not refer to any particular car, and does not designate the automobile referred to in the information or the indictment in

(Testimony of S. J. Adams.)

this case, and on the further ground it is immaterial and incompetent.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. It was a Cadillac limousine.

Mr. FINK.—Q. What model, what year, do you know?

Mr. CUNHA.—The same objection to that.

The COURT.—The same ruling.

Mr. CUNHA.—Exception.

A. 1922, I think it was.

Mr. FINK.—Q. Did you make an examination of the motor of that machine?

A. I did, yes.

Q. Did you see the number 18,664? [23]

The COURT.—I wish to suggest again to counsel if possible to make an objection which may be directed to all of the testimony of this witness so that time may be saved, and the Court will rule upon it and then you can ask your exception to all of the testimony of this witness. Do not you think you have enough to cover it now? I do not want to bind you to anything of that kind, however.

Mr. CUNHA.—I think I understand your Honor's suggestion, and I will try to conform to it.

Mr. FINK.—Q. Did you see the motor number 18,664 upon that motor block?

Mr. CUNHA.—One moment, we object to that on the ground it is immaterial, irrelevant and incompetent, upon all of the other grounds heretofore

(Testimony of S. J. Adams.)

urged, and upon the further ground it is leading and suggestive.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. I cannot recall the number of the motor, but I can recall that there was an alteration on the motor head.

Mr. CUNHA.—I make a motion that the latter part be stricken out on the ground it is a mere volunteer statement of this witness and not responsive to the question.

The COURT.—It may go out.

Mr. FINK.—Q. In your examination of the motor block or wherever the number happened to be did you notice any change or attempt to change the number? A. I did.

Mr. CUNHA.—I object to that as irrelevant and incompetent and upon the further ground that it calls for a mere conclusion and opinion of the witness.

The COURT.—Overruled.

Mr. CUNHA.—Exception. And on the further ground that it is not binding on this defendant.

The COURT.—Overruled.

Mr. FINK.—You may cross-examine.

Mr. CUNHA.—No questions. [24]

TESTIMONY OF M. L. BRITT, FOR THE GOVERNMENT.

Testimony of M. L. BRITT, called for the United States, sworn.

Mr. FINK.—Q. What is your occupation?

A. Special Agent of the Automobile Underwriters, inspector of the State Motor Vehicle Department.

Q. That was your occupation in the year 1922?

A. Yes.

Q. In the year 1922, about the month of August, on or about the sixth of that month did one Henry Leong apply to you for registration or change of registration of a Cadillac limousine?

Mr. CUNHA.—One moment, we object to that upon the ground it is immaterial, irrelevant and incompetent, calls for hearsay testimony, and further on the ground it is not binding on this defendant.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. In the afternoon of September 6, 1922, at 3:40 P. M. Mr. Leong drove a Cadillac suburban car up to the Motor Vehicle Department.

Mr. FINK.—Q. What is a suburban car?

Mr. CUNHA.—Just a moment, Mr. Fink, right there I will make a motion that the answer be stricken out on the ground it is not responsive to the question. The question may be answered yes or *not.*

(Testimony of M. L. Britt.)

Mr. FINK.—It is merely preliminary.

The COURT.—It is preliminary and while it is not absolutely responsive at the same time so that we may save time I will deny the motion.

Mr. CUNHA.—Exception.

A. This Cadillac, which I call a suburban is a Cadillac sedan, it is so registered. I noticed the car across from the Motor Vehicle Department as they drove up, a Cadillac sedan, containing five or six Chinamen at the time.

Mr. CUNHA.—Just a moment. I ask that this witness be questioned and that the examination be conducted in an orderly way by question and answer.

The COURT.—Let the answer go out.

Mr. FINK.—Q. Did Henry Leong apply to you on the date you have named for change in registration or registration in his name for a Cadillac sedan? A. Yes. [25]

Q. Did you make any inspection of that Cadillac sedan?

Mr. CUNHA.—Object to that on the ground it is immaterial, irrelevant and incompetent, not binding on this defendant.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. He presented to me a certificate of registration.

The COURT.—Just a minute. You have heard the question.

Mr. FINK.—Please read the question again.

(Testimony of M. L. Britt.)

(Question repeated by the reporter.) Answer the question? A. Yes.

Q. Did you make an inspection of the motor number? A. I did.

Mr. CUNHA.—I object to that on the ground it is immaterial, irrelevant and incompetent and not binding on this defendant.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. Did you? A. I did.

Q. Did you see upon the motor block or wherever the number appears the number 18,664?

A. Yes.

Mr. CUNHA.—The same objection, and upon the further ground it is leading and suggestive.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. What was the condition, Mr. Britt, of this place where this number appeared?

Mr. CUNHA.—The same objection, and upon the further ground it calls for the mere conclusion, opinion and surmise of this witness.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. It was very rough, and from my observation of engine numbers I knew it not to be a Cadillac engine number.

Mr. CUNHA.—I make the motion that that last statement of the witness be stricken out on the ground it is a mere conclusion and opinion of the witness.

(Testimony of M. L. Britt.)

The COURT.—It will go out. [26]

Mr. FINK.—I will qualify the witness then.

Q. How long have you been in this particular line of business Mr. Britt? A. About ten years.

The COURT.—I think you can ask him that question.

Mr. FINK.—I want to show your Honor that he is a man who has been examining numbers about ten years.

The COURT.—All right.

Mr. FINK.—Q. Have you examined Cadillac cars before in this period of ten years?

A. I have.

Q. Do you know the series of the Cadillac engine numbers?

A. Of that particular year, yes.

Q. Do you know the series of engine numbers of other makes of cars? A. Yes.

Q. Would it have been possible for a 1922 Cadillac sedan to have had the engine number 18,664?

A. No.

Mr. CUNHA.—I object to that on the ground it is immaterial, irrelevant and incompetent, calls for a mere conclusion and opinion of the witness, and furthermore on the ground that no proper foundation has been laid.

The COURT.—On the ground it calls for a conclusion the objection will be sustained.

Mr. FINK.—Q. Did the Cadillac cars have any series of numbers in the year 1922 running in the eighteen thousands?

(Testimony of M. L. Britt.)

Mr. CUNHA.—I object to that question on the ground it is immaterial, irrelevant and incompetent, calls for the mere conclusion and opinion of this witness, and not binding on this defendant, and hearsay.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. No.

Mr. FINK.—Q. Now, what did you do after making this examination, Mr. Britt?

A. I took possession of the Cadillac car.

Q. You took possession of the car. What did you do in the line of notifying other people? [27]

Mr. CUNHA.—Just a moment, I object to that as immaterial, irrelevant and incompetent, and not binding on this defendant, and hearsay.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. I notified detectives Tompkins and Millikin of the San Francisco Auto Detail.

Mr. FINK.—Q. Did you accompany them to Third and Townsend Streets and then to San Jose?

A. Yes.

Q. Was Leong with you? A. Yes.

Q. What did you find, if anything, at Third and Townsend Street depot?

A. At Fourth and Townsend Streets we found the Cadillac car which Mr. Leong owned and had traded to David Pearlman.

Mr. CUNHA.—I make the motion that everything after "we found the Cadillac car" be stricken

(Testimony of M. L. Britt.)

out on the ground that it is a mere conclusion and opinion of this witness and not binding on this defendant.

The COURT.—As to the part "which Mr. Leong owned," that will go out.

Mr. CUNHA.—I don't know as to that.

Mr. CUNHA.—That is also hearsay, will your Honor rule as to both statements?

The COURT.—Let the entire answer go out. Read the question to the witness. (Last question read by the reporter.) Answer that question? It is a simple question. Did you find the car there?

A. We found the car at Fourth and Townsend.

Mr. FINK.—Q. That car was a 1917 Cadillac, was it? A. Yes.

Mr. CUNHA.—The last question is leading.

The COURT.—Yes, but the answer may stand.

Mr. FINK.—Q. What did you do then?

A. We proceeded to the Southern Pacific Depot at Third and Townsend Street.

Q. What did you do? Did you buy any tickets?

A. We ascertained the train time—

Mr. CUNHA.—Just a moment, I object to that on the ground it is immaterial, irrelevant and incompetent and not binding upon this defendant, and hearsay.

The COURT.—Overruled.

Mr. CUNHA.—Exception. [28]

A. We ascertained the time of the trains leaving Third and Townsend for the south.

Mr. FINK.—Q. Did you buy any tickets?

(Testimony of M. L. Britt.)

A. No.

Q. Did you then proceed to go to San Jose?

A. We did.

Q. Now, in what manner?

A. In the Cadillac sedan which I had taken away from Mr. Leong.

Q. Upon arrival in San Jose did you see this defendant?

A. Not at the time of the arrival.

Q. Did you later see him? A. Yes.

Q. About when?

A. About 9:05 P. M. September 6th.

Q. In the evening? A. Yes.

Q. Did you have any conversation with him or were you present when there was any conversation with him, Mr. Britt? A. Yes.

Q. Where was Pearlman when you had this conversation or when you first saw him?

A. He was standing in front of the entrance to the train, in the San Jose depot of the Southern Pacific Railway.

Q. Where did you have this conversation with him?

A. In the police department of the city of San Jose.

Q. Who were present?

A. Detective Millikin, Tompkins, Mr. Leong, Mr. Ehrlich—

Q. Mr. Ehrlich, an attorney at law in San Francisco? A. Yes.

Q. Go ahead. A. Myself and Mr. Pearlman.

(Testimony of M. L. Britt.)

Q. Will you state to the Court *any* jury as near as you remember just the conversation at that time at it relates to this charge here before this Court and jury?

Mr. CUNHA.—We make all the objections heretofore made to the testimony of the conversation as given by the witness Adams, who was first upon the stand and upon the further particular ground that it is immaterial, irrelevant and incompetent, and hearsay, not binding upon this defendant, no foundation has been laid, and an attempt on the part of the prosecution and the Government in this case to prove the facts of this case, the *corpus delicti* by admissions and statements of this defendant. [29]

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. Under the ruling *uou* may answer, Mr. Britt. Read the question. (Last question read by the reporter.)

A. Mr. Pearlman was taken to the San Jose Police Department where we searched him. He was found to have in his possession the sum of $600.

Mr. CUNHA.—Just a moment, we make a motion that that statement be stricken out on the ground it is not responsive to the question.

The COURT.—It may go out. Just read the question. (Last question repeated by the reporter.) Go ahead and answer the question.

A. The conversation that we had with Pearlman

(Testimony of M. L. Britt.)

—he was asked what had become of the $2,100 which had been given him by the Chinaman.

Mr. FINK.—Q. What did he say?

A. He said that he had owed a party $1,500 and had forwarded it that day, September 6th; he was in possession of $600 when we searched him.

Q. Did you have any further conversation at that time?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. We asked him about the Cadillac car which was abandoned at Fourth and Townsend Streets, San Francisco, and he stated, he said, "Well, you have me and that is all there is to it."

Mr. FINK.—Q. What if anything did he say—

Mr. CUNHA.—I move the last answer be stricken out on the ground it is immaterial, irrelevant, incompetent, and hearsay, not binding upon the defendant, and upon all the other grounds heretofore urged in my objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. Was there any conversation concerning the car, the Cadillac sedan which was in the possession of Leong when you first saw it?

Mr. CUNHA.—We object to that on all the grounds heretofore urged, and on the further ground it is leading and suggestive. [30]

The COURT.—Overruled.

Mr. CUNHA.—Exception.

(Testimony of M. L. Britt.)

A. He admitted that he had purchased the Cadillac sedan in New York City from in front of Brown's Auction House.

Mr. FINK.—Q. Did he tell you what he paid for it?

A. The sum of $1,000.

Mr. CUNHA.—May we have our objection to all this line of testimony on the grounds heretofore urged, and an exception?

The COURT.—Very well.

Mr. FINK.—Q. What if anything was said by him concerning his method of getting to San Francisco?

A. He stated that he had come out from New York as far as Salt Lake City and had gone from Salt Lake City to Los Angeles via one of the trails, I have forgotten which one it was.

Q. Driving? A. Yes.

Q. Did he say where he stopped in Salt Lake City that you recall?

A. I don't recall that, no.

Q. Now, at the time the trip was made to San Jose what else did you find other than the money?

A. I am a little in doubt as to what was found at the time.

Q. Did you find any papers?

A. There were papers found but what the contents were I don't know.

Mr. FINK.—You may take the witness.

Mr. CUNHA.—No questions.

(Testimony of M. L. Britt.)

Mr. FINK.—Pardon me: Did you return the defendant to San Francisco?

A. Detectives Tompkins and Milliken and myself, yes.

Mr. CUNHA.—We make a motion that all of the testimony of this witness upon all the grounds heretofore urged be stricken out, especially objecting to the admission of statements in evidence of this defendant and conduct of this [31] defendant, and ask that they all be stricken from the record upon all of the grounds heretofore urged.

The COURT.—Motion denied.

Mr. CUNHA.—Exception.

TESTIMONY OF HENRY R. LEONG, FOR THE GOVERNMENT.

Testimony of HENRY R. LEONG, called for the United States, sworn.

Mr. FINK.—Q. Where do you live, Mr. Leong?

A. San Francisco.

Q. California? A. Yes.

Q. What is your business?

A. Automobiles for hire.

Q. Was that your business in 1922? A. Yes.

Q. State whether or not in the year 1922 you were the owner of a 1917 Cadillac car? A. Yes.

Q. Do you know this defendant, David Pearlman? A. Yes.

Q. Did you buy a car from him in 1922, in July or August?

(Testimony of Henry R. Leong.)

Mr. CUNHA.—Just a moment, we make an objection, if your Honor please, to this testimony on all the grounds heretofore urged to the testimony of the witness Adams and the last witness, Mr. Britt, and on the further ground that it calls for the mere opinion, conclusion and surmise of the witness.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. On September 6th.

Mr. FINK.—Q. It was on September 6th?

A. Yes.

Q. Did you buy a car from him upon that day?

A. Yes.

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. What kind of a car?

A. Cadillac suburban.

Q. That is a sedan, is it not, like a sedan?

A. Yes.

Q. What model was it, what year? A. 1922.

Q. What did you give him for that 1922 model of Cadillac?

Mr. CUNHA.—The same objection. [32]

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. $2,100 and my car.

Mr. FINK.—Q. $2,100 and what car?

A. One of the 1917 Cadillacs.

Q. You gave him $2,100 in cash? A. Yes.

(Testimony of Henry R. Leong.)

Q. About what time of day did you make the deal, just approximately?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Around about two o'clock in the afternoon.

Mr. FINK.—Q. What did you do after you had made the deal?

Mr. CUNHA.—I object to that on all the grounds heretofore urged, and on the further ground it is not binding on this defendant.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. I went up to the State Motor Vehicle Department to obtain a license.

Mr. FINK.—Q. Who did you see up there?

A. Mr. Britt.

Q. Did you see the motor number on the car?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Not until I saw Mr. Britt.

Mr. FINK.—Q. Not until you saw Mr. Britt?

A. No.

Q. Did the defendant give you a bill of sale to the car? A. Yes.

Mr. CUNHA.—Just a moment, I make a motion that the answer be stricken out for the purpose of objection.

The COURT.—Overruled.

Mr. CUNHA.—We make the objection upon all

(Testimony of Henry R. Leong.)

of the grounds, heretofore urged, and upon the further ground that this asks for evidence that is not the best evidence. [33]

The COURT.—Overruled.

Mr. CUNHA.—And only calls for the conclusion and opinion of this witness.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. Did the defendant give you a bill of sale to the Cadillac Sedan? A. Yes.

Q. What has become of that, if you know?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. I took it.

Q. You had it in your possession? A. No.

Q. I say you did have it in your possession?

A. Yes, I did.

Q. When did you last see it, how long since you have seen it?

A. I only saw it a little while, and turned it over to my attorney, Mr. Ehrlich.

Q. Did you have any conversation with the defendant before you bought this car?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Yes.

Mr. FINK.—Q. Just tell the Court any jury what he said about this ownership of the car.

(Testimony of Henry R. Leong.)

Mr. CUNHA.—The same objection, and upon the further ground it is leading and suggestive.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. I can't remember all that he told me.

Mr. FINK.—Q. Just do the best you can, as near as you remember it.

Mr. CUNHA.—The same objection, if your Honor please.

The COURT.—Overruled.

Mr. CUNHA.—Exception. [34]

A. I asked him who owned that car, and he told me that he owned it.

Mr. FINK.—Q. Did he tell you where he got it?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. No.

Mr. FINK.—Q. Now, when you saw that motor number up there at the Motor Vehicle Department, did you make any examination of the case where the number was put on?

Mr. CUNHA.—We object to that on the ground it is immaterial, irrelevant and incompetent, and upon all of the ground heretofore urged.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Yes.

Mr. FINK.—Q. Just describe the appearance of the place where the number was, what you saw?

Mr. CUNHA.—The same objection.

(Testimony of Henry R. Leong.)

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. I can't remember now the number.

The COURT.—The appearance of it; just state the appearance of it?

Mr. FINK.—Q. How did it look?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. Just tell us what you saw.

The COURT.—Do you understand the question?

A. Yes. The oil covered up the new number, and I could hardly notice it.

Mr. FINK.—Q. Is that all? A. That is all.

Q. After you had seen Mr. Britt, did you go with him down to the Third and Townsend Streets depot? A. Yes.

Q. Did you find your old 1917 Cadillac car?

Mr. CUNHA.—I object to that on the grounds heretofore urged. [35]

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Yes.

Mr. FINK.—Q. Where?

A. On Fourth and Townsend.

Q. Was there anybody in it? A. No.

Q. Where did you then go?

A. Back up to Eighth Street.

Q. Did you go to San Jose? A. Afterwards.

Q. Did you see this defendant at San Jose?

A. Yes.

(Testimony of Henry R. Leong.)

Q. Where? A. At the Southern Pacific Depot.

Mr. FINK.—That is all. You may cross-examine.

Mr. CUNHA.—No questions.

TESTIMONY OF W. E. SUTTON, FOR THE GOVERNMENT.

Testimony W. E. SUTTON, called for the United States, sworn.

Mr. FINK.—Q. Mr. Sutton, where do you live?

A. Salt Lake City, Utah.

Q. What is your business? A. Hotel.

Q. What hotel? A. Newhouse.

Q. What position do you occupy?

A. Assistant manager.

Q. Have you got the register and the cash-book of the Newhouse Hotel for the 10th and the 12th of August, 1922, with you?

A. I have the register for the date of August 10, 1922, and the cash-book for those days.

Q. This is a page from the register of the Newhouse Hotel? A. Yes.

Q. And that is your cash-book which covers the dates that the guests were there? A. Yes.

Mr. FINK.—I would ask that these be marked for identification, if your Honor please, the register of the Newhouse Hotel for Thursday, August 10, 1922, upon which there appears the registration, "Mr. and Mrs. D. Pearlman, Frisco, Cal."

The WITNESS.—That is on the 12th in the cash-book.

(Testimony of W. E. Sutton.)

Q. The registration is the 10th, and that is correct? A. Yes. [36]

Q. The cash-book shows the date that they stayed? A. Yes.

Q. Can you tell from the cash-book when the parties who registered as indicated checked out?

A. They checked out and paid in advance.

Mr. CUNHA.—We make an objection to all of this line of testimony on the ground it is immaterial, irrelevant and incompetent, and not binding upon the defendant, no foundation laid.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. They checked out on the 12th, paying in advance sometime after eight o'clock the night of the 11th.

TESTIMONY OF WILLIAM F. MILLIKEN, FOR THE GOVERNMENT.

Testimony of WILLIAM F. MILLIKEN, called for the United States, sworn.

Mr. FINK.—Q. Mr. Milliken, what is your occupation?

A. Detective Bureau, Police Department, San Francisco.

Q. San Francisco, California? A. Yes.

Q. Do you know this defendant, David Pearlman? A. I participated in his arrest.

Q. Upon what date? A. September 7, 1922.

Q. Where? A. In San Jose.

Q. Where did you start from?

(Testimony of William F. Milliken.)

A. San Francisco.

Q. How were you conveyed, how did you go down there?

A. We went down in a Cadillac automobile.

Q. A sedan? A. Yes.

Q. Did you inspect the number block on that sedan? A. I did.

Q. Will you describe to the Court and jury what you saw, how that number appeared?

Mr. CUNHA.—I object to the question on the ground it is immaterial, irrelevant and incompetent, not binding upon this defendant, and upon all the [37] other grounds heretofore urged to the testimony of the witnesses Adams, Britt and Leong.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. It was very apparent that the number had been changed. There was no series letter.

Mr. CUNHA.—We make a motion now that the answer be stricken out on the ground it is a mere conclusion and opinion, and surmise of this witness.

The COURT.—Denied.

Mr. FINK.—Q. When you got to San Jose, where did you see the defendant?

A. In front of the depot, the Southern Pacific depot at San Jose.

Q. What did you do? Did you place him under arrest at that point?

A. We took him to the police station in San Jose.

Q. Were you present when the defendant was searched, Mr. Milliken? A. I was.

(Testimony of William F. Milliken.)

Q. Will you tell the Court and jury what was found upon him?

A. A sum of money in the neighborhood of $600 and other papers and cards, I do not recall just exactly what they were.

Q. Did you find any railroad transportation upon him?

Mr. CUNHA.—If your Honor please, we would like to object to this line of testimony upon all of the grounds heretofore urged.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. There was a ticket calling for transportation to Los Angeles, and a Pullman berth ticket also in his possession.

Mr. FINK.—Q. Was there a bill of sale among the papers taken off of him? A. I do not recall.

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. Now, Mr. Milliken, were you present at the time a conversation was had at the police station? A. I was. [38]

Q. That was after the arrest of the defendant?

A. Yes.

Q. Will you state as nearly as you now remember just what that conversation was?

Mr. CUNHA.—Now, if your Honor please, we object to this testimony upon all of the grounds heretofore urged to the testimony of a similar character given by the witness Adams and the wit-

(Testimony of William F. Milliken.)

ness Britt, as to statements or conduct on the part of this defendant.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. We asked Mr. Pearlman how he came into possession of this particular Cadillac sedan, referred to in this complaint, and he informed us that he had purchased the car for $1,000 in New York, and had driven it through to Salt Lake City and then to Los Angeles, where he had registered it, and then to San Francisco.

Mr. FINK.—What else?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. I questioned him further in regard to the automobile, if he knew it was stolen, and he would not make much of a further statement, but says: "You have me now, and the automobile now, so there is no use of my making any further signed statement."

Mr. CUNHA.—I move to strike out that last answer on all of the grounds heretofore urged, and upon the ground it is immaterial, irrelevant and incompetent, and hearsay.

The COURT.—Denied.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. Was there anything further said by him in reference to the charge here?

A. There was considerable conversation that per-

(Testimony of William F. Milliken.)

tained to the car; I do not recall anything other than that.

Q. As regards the stay at Salt Lake, did he tell you where he stayed?

A. I did not hear him refer to that. [39]

Q. Did he tell you how he came across the country from New York?

A. He said that he had driven as far as Salt Lake City and then turned south, and then went into Los Angeles.

Q. Driving what?

Mr. CUNHA.—Of course, we have our objection to all of this line of testimony.

The COURT.—Yes.

Mr. CUNHA.—And exception.

The COURT.—Yes.

Mr. GILLIS.—In what?

A. In this particular Cadillac sedan automobile, referred to in this complaint, that he had driven it the entire way.

Mr. CUNHA.—I make a motion that the words, "referred to in this complaint," be stricken out on the ground it could not have been referred to, because it was not filed at that time.

The COURT.—Denied.

Mr. CUNHA.—Exception.

TESTIMONY OF J. W. EHRLICH, FOR THE GOVERNMENT.

Testimony of J. W. EHRLICH, called for the United States, sworn.

Mr. FINK.—Q. Mr. Ehrlich, What is your name?

A. J. W. Ehrlich.

Q. Your profession is that of attorney at law?

A. Yes.

Q. Practicing in the city and county of San Francisco, State of California? A. Yes.

Q. Do you know Henry E. Leong? A. Yes.

Q. Are you his attorney?

A. I was at the time.

Q. You were in 1922? A. Yes.

Q. Do you know this defendant, David Pearlman? A. Yes.

Q. Did you see him on or about September 6th, 1922? A. I did.

Q. In what connection?

A. He called, together with Leong, at my [40] office a day or two previous to that date, and offered to sell—

Mr. CUNHA.—Just a moment. I make an objection to that.

The COURT.—All right. Proceed with the examination.

Mr. FINK.—Q. Upon their arrival at your office, did you have a conversation with this defendant and Mr. Leong? A. I did.

Q. What was the subject matter of that conversation?

(Testimony of J. W. Ehrlich.)

Mr. CUNHA.—I object to that on the ground it is immaterial, irrelevant and incompetent, and upon all of the grounds heretofore urged to the testimony given by the prior witnesses, as to any statements, or admissions, or conduct, or verbal statements of this defendant.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. The defendant offered to sell to Leong in my presence the Suburban type Cadillac that is here in question, and I told Leong, in his presence, that before I would recommend that he buy it, I would have to satisfy myself as to its ownership by going to the Motor Vehicle Department. I went to the Motor Vehicle Department and inquired—

Mr. CUNHA.—I object to that on the ground it is not responsive to the question.

The COURT.—It is overruled, for the purpose of saving time.

Mr. CUNHA.—Exception.

A. I inquired at the Motor Vehicle Department as to the ownership of the suburban type of Cadillac, and they showed me a record—

Mr. CUNHA.—Just a moment, if your Honor please, I object to that on the ground it is hearsay, immaterial, irrelevant and incompetent, not occurring in the presence of this defendant, and not binding upon the defendant, hearsay.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. One of the clerks showed me a record that the

(Testimony of J. W. Ehrlich.)

automobile had been registered in, I believe, Sacramento.

Mr. CUNHA.—Just a moment, we make a motion that that be stricken out.

The COURT.—Now, Counsel, in the beginning of this examination of witnesses [41] I sustained objections that were made by you to permitting witnesses to tell their story to the jury in narrative form, so that you might have the opportunity of making objections when questions were asked and before the answers were made. Now, I thought that would give you an opportunity to interpose what objections you have a right to interpose in protecting the rights of your client. It seems we are going to use up a lot of time if I permit the examination to go ahead in that manner, so I think that, for the purpose of saving time and expediting this trial I will permit the witness to answer the questions that may be propounded by the attorney for the Government in narrative form, and that when the witness has finished his answer you may then interpose such motions and such motions and such objections as you see fit. Now, do not interrupt the witness until he has finished his answer in narrative form.

Mr. CUNHA.—To which ruling of the Court we respectfully take an exception.

The COURT.— you have objected *yo* every statement, but do not interrupt this witness until he is through, and then make all the objections you want to. Now, Mr. *Funk,* frame a question such as you

(Testimony of J. W. Ehrlich.)

think you would like to ask this witness, and we will proceed.

Mr. FINK.—Q. Did you ascertain in whose name the car was registered? A. I did.

Q. You got that, you have already said, from the Motor Vehicle Department? A. Yes.

Q. Whose name was it registered in?

A. David Pearlman.

Q. At that time? A. Yes.

Q. Did you then, have subsequent meeting, there being present Leong and Pearlman and yourself?

A. Yes.

Q. At the subsequent meeting—you stated that the first meeting was two or three days prior to the 6th, I believe; is that correct?

A. Prior to the 6th.

Q. Then when was the next one?

A. It was on the 6th, as I remember it. [42]

Q. What happened at that subsequent meeting?

Mr. CUNHA.—I object to that on the ground it is immaterial, irrelevant and incompetent, and upon all of the grounds heretofore urged.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. I told Mr. Pearlman that I had investigated as far as I could the ownership, and that it was registered in his name, but that I would want a bill of sale to him from the original owner.

Mr. FINK.—Q. Did he produce such a bill of sale?

Mr. CUNHA.—The same objection.

(Testimony of J. W. Ehrlich.)

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. He produced a bill of sale from a man in Los Angeles, whose name, I believe, was Lewis.

Q. Do you remember about the date of that bill of sale?

Mr. CUNHA.—We object to that on the further ground that it does not call for the best evidence.

Mr. FINK.—I will withdraw that last question.

Q. You had in your possession the bill of sale?

A. I did.

Q. How long did you have it, about?

A. Until about two weeks ago.

Q. What became of it, do you know?

A. Well, there was an action upon the arrest of the defendant, he was prosecuted in the Police Court, and at that time I appeared as special prosecutor for the people, and I introduced the bill of sale in evidence at that time.

Q. You have never seen the bill of sale since?

A. No, I have not.

Q. You don't know now where it is?

A. I do not know where it is other than the fact that I introduced it.

Q. Do you remember approximately the date of that bill of sale?

Mr. CUNHA.—We object to that on all of the grounds heretofore urged, and on the further ground it calls for evidence not the best evidence, no foundation laid.

The COURT.—Overruled. [43]

(Testimony of J. W. Ehrlich.)

Mr. CUNHA.—Exception.

A. No, Mr. Fink, I do not exactly remember that date.

Mr. FINK.—Q. Using the date September 6, 1922, the date of the consummation of the transaction, about how far back of it do you think it was?

A. I think it was two or three months.

Q. Now, was the deal for the Cadillac car or Cadillac sedan consummated? A. Yes.

Q. Consummated through you, as the attorney for Leong? A. Yes.

Q. You know the terms of the deal? A. Yes.

Q. Now, did you accompany Mr. Britt, Detective Milliken, and one other detective, and Mr. Leong, to San Jose? A. I did.

Q. Did you see the defendant there? A. I did.

Q. Where?

A. I first saw him at the Southern Pacific depot.

Q. And later where?

A. In the police station in the city of San Jose.

Mr. FINK.—I desire at this time to introduce in evidence in this case a record of this court, the bond of this defendant in this case, the purpose being to compare the signature thereupon with Government's Exhibit 1 for Identification.

Mr. CUNHA.—To which we object on the ground it is immaterial, irrelevant and incompetent, not binding upon this defendant, no proper foundation having been laid.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

The COURT.—You are offering it in evidence now, Mr. Fink?

Mr. FINK.—Yes.

The COURT.—It may be marked.

Mr. FINK.—It is already of record, and it need not be filed again.

Mr. CUNHA.—If your Honor please, at this time I move— [44]

The COURT.—I did not make myself clear. My purpose in making the statement I did to you, saying that hereafter I would permit witnesses to give their testimony in narrative form, so that it would prevent this long stringing out of objections, coming long after each question and answer, and that I would give you an opportunity to make an objection if you felt so disposed to the narrative of the witness, Mr. Fink did not see fit to follow that line.

Mr. CUNHA.—This witness gave some testimony as to the records of the Motor Vehicle Department, and we make a motion that it be stricken out on the ground it is hearsay, and not the best evidence, and immaterial, irrelevant and incompetent, and not binding upon this defendant.

The COURT.—Denied. I do not now recollect what the records were, but if they are necessary to be produced I assume the Government will produce them here at the proper time.

To which ruling the defendant excepted.

TESTIMONY OF S. J. ADAMS, FOR THE GOVERNMENT (RECALLED).

Testimony of S. J. ADAMS, recalled for the United States.

Mr. FINK.—Q. Mr. Adams, in the matter of any conversation with this defendant, have you related all of the conversation that you remember with reference to the car, the Cadillac sedan?

A. I cannot exactly recall anything else, unless it is general conversation.

Q. Do you recall a conversation with this defendant, in which the defendant told you what he knew about how he got the car?

Mr. CUNHA.—I object to that upon all of the grounds heretofore urged as to admissions and statements of this defendant, and upon the further ground it is leading and suggestive.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Do you refer to a conversation as to where he claimed he bought the car.

Mr. FINK.—Yes. You have already testified to that? A. Yes.

Q. Did you have a later conversation in which he stated what he found out about the car?

A. Yes, he said he did not know it was a stolen car until a few days after he left New York. [45]

Q. What did he say about his knowledge at that time?

Mr. CUNHA.—The same objection.

(Testimony of S. J. Adams.)

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Well, I cannot exactly say.

Mr. FINK.—Q. Did he say to you, or did he not say to you that he knew it was a stolen car?

A. Yes.

Mr. CUNHA.—Just a moment, I object to that on all of the grounds heretofore urged, and on the ground it calls for the mere conclusion and opinion of the witness, and not binding upon this defendant, no foundation laid, hearsay and on the further ground it is leading and suggestive.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. As I said before, he said that he did not know it was a stolen car until he left New York.

Mr. FINK.—Now, if your Honor please, I ask for the introduction in evidence of the register of the Newhouse Hotel of August 10. It is now marked for identification, the Court will recall.

The COURT.—It may be admitted.

Mr. CUNHA.—We would like to object to its introduction.

The COURT.—All right, object.

Mr. CUNHA.—Upon the ground it is immaterial, irrelevant and incompetent, hearsay, upon the further ground that no foundation has been laid, upon the ground that it is an attempt on the part of the Government to prove the *corpus delicti* in this case by statements and admissions, and admissions by conduct on the part of this defendant.

(Testimony of M. L. Britt.)

The COURT.—Overruled.

Mr. CUNHA.—Exception.

(The register was marked U. S. Exhibit 1.)

Mr. FINK.—I desire to exhibit to the jury the registration upon this page at the point marked with a cross, and signature "David Pearlman" upon the other [46] document. The sole purpose of this document, Gentlemen, is to compare the signature "David Pearlman."

TESTIMONY OF M. L. BRITT, FOR THE GOVERNMENT (RECALLED).

Testimony of M. L. BRITT, recalled for the United States.

Mr. FINK.—Q. Mr. Britt, were you able to read the true number of that automobile, that Cadillac sedan?

Mr. CUNHA.—Just a moment, I object to that on the ground it is immaterial, irrelevant and incompetent, calls for the opinion and conclusion of the witness, on the further ground it is hearsay and not the best evidence, not binding on this defendant.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. The correct motor number—

Mr. CUNHA.—Just answer "Yes" or "no," first.

A. No.

Q. Were you able to ascertain the true number by any examination?

(Testimony of M. L. Britt.)

Mr. CUNHA.—The same objection, as to the last question.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. The car was identified through a secret unit number—

Mr. CUNHA.—We object to that.

The COURT.—Strike out the answer. Read the question.

(Last question repeated by the reporter.)

A. No.

Mr. FINK.—Q. Mr. Britt, you testified that you had been in this business and have been examining automobiles for a period of about ten years or thereabouts? A. Yes. [47]

Q. Is there any distinctive mark on a Cadillac which is distinguished from the motor number?

Mr. CUNHA.—Just a moment. I object to that on the ground it is immaterial, irrelevant and incompetent, calls for the conclusion and opinion of this witness, hearsay, and not the best evidence.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Yes, they use a prefix in the different years models.

Mr. FINK.—Q. Where does that appear?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. It appears upon the motor base at the right rear, and upon a plate upon the dashboard.

(Testimony of M. L. Britt.)

Mr. FINK.—Q. What is this called by the company?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. What do you know this number as?

A. It would be known as the correct motor number.

Q. Were you able to identify the other number?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Not from the motor number, no.

Mr. FINK.—Q. By its use you are able to determine the other number, are you not?

Mr. CUNHA.—Same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. If I could explain it I would tell you the workings of it.

Q. What unit number—do you call it a unit number? A. Yes. [48]

Q. What unit number did you find upon this block?

Mr. CUNHA.—The same objection.

The COURT.—The same ruling.

Mr. CUNHA.—Exception.

A. The secret unit number appears on all automobiles, which gives the entire history of all the cars, and the automobile record—

(Testimony of M. L. Britt.)

Mr. CUNHA.—I object to the answer as not responsive to the question, and ask that the word "secret" be stricken out as a mere conclusion and opinion of this witness.

The COURT.—Denied.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. Was the true number of that automobile, that true motor number at this point?

Mr. CUNHA.—I object to that on the ground it is immaterial, irrelevant, and incompetent, calls for the mere conclusion and opinion of the witness, and hearsay.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Through the secret number it was identified, yes.

Mr. CUNHA.—I make the motion that that be stricken out on the ground it is not responsive to the question.

The COURT.—Denied.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. What was that unit number?

Mr. CUNHA.—The same Objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. I could not give the unit number at this time —the proper motor number, that is all.

Mr. FINK.—Q. Do you know the proper motor number or the correct motor number that you ascertained in the manner you have described?

A. Yes.

(Testimony of M. L. Britt.)

Mr. CUNHA.—I object to that on the ground it is immaterial, irrelevant [49] and incompetent, not the best evidence, calls for the mere opinion and conclusion of this witness, and hearsay.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

Mr. FINK.—Q. What it it?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. 61 A 130.

Mr. CUNHA.—If your Honor please, we want to present an argument and motion, and the Government's entire case should be in before the motion is made. Mr. Davis was here just before noon. [50]

The COURT.—Proceed with your motion.

Mr. CUNHA.—If your Honor please, at this time I make a motion now that all of the testimony of the witnesses for the Government, and particularly the testimony of the witness for the Government, concerning admissions and statements by the defendant, and conduct on the part of the defendant, that all that testimony be stricken out, upon the ground that no proper foundation has been laid for the testimony, on the ground that there is nothing connected up, and the further ground it is immaterial, irrelevant and incompetent, hearsay, and not binding upon the defendant, upon the ground that it has been merely an attempt to prove the *corpus* of this offense, the *corpus delicti* by admissions, statements of the

defendant and by conduct on the part of the defendant, which must come in under the head of admissions; I make a motion that all of that testimony be stricken out on all of the grounds heretofore stated, and upon all the grounds urged at the time the testimony was objected to.

The COURT.—Denied.

Mr. CUNHA.—To which ruling the defendant by his counsel then and there duly excepted.

Mr. CUNHA.—Now, if your Honor please, I at this time make a motion that your Honor advise and instruct this jury to return a verdict in favor of the defendant, a verdict of acquittal, upon the ground that the evidence presented by the prosecution is insufficient to support and prove any allegation of the indictment; the evidence is insufficient to establish and prove any offense in this case as set forth in the indictment. I do not believe, if your Honor please, that it is necessary for me to argue it at any great length, the fact that the corpus delicti in a case must be proved by evidence apart from a conversation, or admissions, or statements of the defendant. (After argument.)

The COURT.—The motion is denied.

To which ruling the defendant by his counsel then and there in open court, duly excepted. [51]

Thereupon both parties announced they had no more evidence to present and the evidence was closed. The cause was argued by counsel for the respective parties to the jury, and thereupon the court instructed the jury as follows:

CHARGE TO THE JURY.

The COURT.—(Orally.) Gentlemen of the Jury: The offense charged against the defendant, David Pearlman, is that on or about the 26th of July, 1922, in violation of the National Motor Vehicle Act of October 29, 1919, he did unlawfully, wilfully, knowingly and feloniously transport and cause to be transported in interstate commerce, to wit: from the city of New York, in the State of New York, to San Francisco, and into the jurisdiction of this court, a certain motor vehicle, to wit: a Cadillac automobile, motor number 18,664, said defendant then and there well knowing that at the time of the said transportation the said motor vehicle had been stolen.

The indictment on file herein is, and is to be considered as a mere charge or accusation against the defendant, and is not, of itself, any evidence of the defendant's guilt, and no juror in this case should permit himself to be, to any extent, influenced against the defendant because or on account of such indictment on file.

I charge you that the term "interstate commerce," as used in the Act of Congress mentioned, includes transportation from one State to another. I charge you further, under the facts in this case, that, if you find Pearlman took this vehicle, and by driving it, moving it through the use of its own power, caused himself to be transported by this vehicle from New York State to California, for any purpose whatsoever, that that would be a transportation in interstate commerce, as intended by that statute. [52]

I charge you as a matter of law that it is for you to say whether, under all of the circumstances, all of the testimony in the case, it indicates to your mind, to the exclusion of any other reasonable inference, that there was guilty knowledge on the defendant's part, that he knew the car must have been stolen. If you come to the conclusion beyond a reasonable doubt that he knew it was stolen, you should find him guilty; otherwise, not guilty.

The jury are the exclusive judges of the facts. The province of the court and the province of the jury is entirely separate and distinct. You are to receive the law from the court and you are bound to accept the law as given you by the court. The facts of the case are to be decided by you.

You are the exclusive judges of the weight, value and effect of the evidence, and of the credibility of the witnesses. Under your oaths as jurors, you are to take into consideration only such evidence as has been admitted by the court, and you should, in obedience to your oath, disregard and discard from your minds every impression or idea suggested by questions asked by counsel which were objected to and to which objections were sustained.

In criminal cases, guilt must be established beyond a reasonable doubt, and the burden of establishing such guilt rests upon the Government. The law does not require of the defendant that he prove himself innocent, but the law requires the Government to prove the defendant guilty, in the manner and form as charged in the

indictment, beyond a reasonable doubt, and unless the Government has done so, the jury should acquit. Before a verdict of guilty can be rendered, each member of the jury must be able to say, in answer to his individual conscience, that he has in his mind arrived at a fixed opinion, based upon the law and the evidence of the case, and nothing else, that the defendant is guilty.

If the evidence relating to any circumstance in this case is, in view of all of the evidence, reasonably susceptible of two interpretations, one of which would point to the defendant's guilt and the other of which would admit of his innocence, then it is your duty in considering such evidence to adopt that interpretation which will admit of the defendant's innocence if the same may be done reasonably. [53]

The defendant did not take the witness-stand, or offer himself as a witness in this case. This is his right. He is entitled to stand upon the insufficiency of the evidence offered by the Government, if there be insufficiency in that evidence. And, in consequence, his failure to testify cannot be commented upon or used against him, and may not be the basis of any presumption against him.

The law presumes a defendant charged with crime innocent until proven guilty beyond a reasonable doubt. This presumption remains with the defendant, and will avail to acquit him unless overcome by proof of his guilt beyond a reasonable doubt. If you can reconcile the evidence before

you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case find such defendant not guilty.

A reasonable doubt is a doubt resting upon the judgment and reason of men who conscientiously entertain it from the evidence in the case. It is a doubt based upon reason. By such a doubt is not meant every possible or fanciful conjecture that may be suggested or imagined. A reasonable doubt is that stage of the case which after the entire comparison and consideration of all of the evidence in the case leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

The Court cautions you to distinguish carefully between the evidence given by the witnesses and the statements made by counsel or contained in their argument, as to what facts have been proven. And if there is a variance between the two, you must, in arriving at your verdict, to the extent that there may be such variance, consider only the facts testified to by the witnesses.

When, weighing all the evidence, you have an abiding conviction and belief that the defendant is guilty, it it your duty to convict, and no sympathy justifies you in seeking for doubts by any strained or unreasonable construction or interpretation of law or facts.

Your verdict must be unanimous.

When you are alone in the jury-room, you may select one of your number as foreman, and when

you have agreed upon a verdict your foreman [54] *your foreman* will sign the verdict and you will be returned to the courtroom, where you will deliver your verdict. You may now retire for deliberation.

(Thereupon the jury retired, and at 4:10 o'clock P. M., the jury was brought into court, when the following proceedings were had):

The COURT.—Gentlemen: The officer in charge of you has indicated to me that you wish to ask a question.

The FOREMAN.—Yes, your Honor, we do desire to ask you a question about whether or not the defendant should have had knowledge that this was a stolen car.

The COURT.—The language of the indictment, Gentlemen, is quite plain. The indictment charges that David Pearlman, on or about July 28, 1922, in violation of Section 3 of the National Motor Vehicle Act of October 29, 1919, did unlawfully, wilfully, knowingly and feloniously transport and cause to be transported in interstate commerce, to wit, from the city of New York, in the State of New York, to San Francisco, in the State of California, a certain motor vehicle, to wit: a Cadillac automobile, motor No. 18,664, said defendant then and there well knowing that, at the time of said transportation, said motor vehicle had been stolen.

Now, the charge in the indictment is based upon the provisions of the statute. The indictment contains the same language that the statute con-

tains, that is to say, the same language with reference to trnsportation and with reference to knowledge. My recollection of the provisions of the statute is that it must be with guilty knowledge, that is to say, the transportation must take place, or must be made by the defendant, the defendant then and there well knowing that at the time of the transportation the motor vehicle had been stolen.

The clerk has handed me the Federal Code, and, referring to that, I find that the language is: "Knowing the same to have been stolen." Those words are in the statute, "knowing the same to have been stolen."

Does that answer your question?

The FOREMAN.—I think it answers it partly. Must he have had knowledge on the date of July 28th?

The COURT.—On or about that date. My view of that would be that if [55] an offense were committed it might be said to be a continuing offense, that is to say, that he might or might not have known that the automobile had been stolen when he left the State of New York. I take it that if he thereafter had learned that the automobile had been stolen after he left the State of New York, and he continued on his way across the country through other States and came to California, I should say that, if you find that that was the evidence, that that would be sufficient to sustain a conviction. Is that clear?

Mr. CUNHA.—On behalf of the defendant, if

your Honor please, we except to the instruction just given by the Court.

The COURT.—Does that make it clear?

The FOREMAN.—Yes, your Honor.

The COURT.—Now, you will remember that I charged you, and I will repeat it to you in this connection: I charge you as a matter of law that it is for you to say whether, under all of the circumstances, all of the testimony in the case, it indicates to your mind, to the exclusion of any other reasonable inference, that there was guilty knowledge on defendant's part, that he knew the car must have been stolen. If you come to that conclusion beyond a reasonable doubt, that he knew it was stolen, you should find him guilty, otherwise not guilty. You may return to the jury-room for further deliberation.

Another JUROR.—Your Honor, on the admissibility of the defendant's own testimony?

The COURT.—What about it?

The JUROR.—Whether that can be taken against him.

The COURT.—I read you an instruction, Mr. Juror, to the effect, calling your attention to the fact, that the defendant had not seen fit to take the stand. Now, he does not have to take the stand, and the fact that he does not take the stand you must not hold against him in any way.

The JUROR.—That is the point I wanted.

The COURT.—He is presumed to be guilty, and the Government must prove him guilty. The fact that he has not taken the stand you must not take

against him. I should have said he is presumed to be innocent. [56]

A JUROR.—The fact that he does not take the stand does not prove him guilty?

The COURT.—No, the fact that he does not take the stand does not prove him guilty?

Another JUROR.—Your Honor, I would like to ask this question, which came up in the jury-room, with reference to the evidence that was submitted here this morning by men who said things that the defendant had said at the time of the arrest. Some of the jurors felt that such testimony was not to be considered at all, because it was the defendant that had made such admissions.

The COURT.—A man may make admissions, and those admissions may be against his own interests. The law permits reception of such evidence. Now, it is for you to determine from that evidence whether or not the defendant is guilty. That evidence was properly admitted, and you are to weigh that the same as you would any other evidence that was introduced before you. It is not for you to question the propriety of the admission of such evidence. When the Court admits the evidence, then you are to consider that evidence in conjunction with all of the other evidence that has been admitted in the case. You must not argue amongst yourselves whether or not the Court is right in admitting certain evidence. That is not your province at all. Your province is simply to weigh the evidence before you and arrive at a verdict.

Now, then, Gentlemen, I am going to return you to the jury-room, and I am going to ask you to deliberate upon the case further. It may be that I will not be here when you have arrived at a verdict, so I am going to make an order in the premises:

The Court orders that should the jury agree upon a verdict before the reconvening of the court to-morrow morning at ten o'clock the verdict, as agreed upon and signed by the foreman of the jury shall be placed in an envelope and sealed in the presence of the jury and the same shall thereafter be safely kept by the foreman until the reconvening of the court to-morrow morning, when the foreman shall deliver the sealed verdict to the Court. In the event a verdict is reached, the same shall be kept secret by each member of the jury until such verdict is returned to the Court. And further, in the [57] event that the jury agree upon a verdict and the same is sealed and kept as aforesaid, the individual jurors may separate and go their several ways until the reconvening of court as aforesaid.

Now, then, Gentlemen, in the event you do not agree within a reasonable time, arrangements will be made whereby you may be put up for the night in a suitable hotel and kept there under the custody of the officers of the court, until you are returned here to-morrow morning. Now, do you understand what I have said to you with reference to the sealed verdict?

The FOREMAN.—Yes, your Honor.

The COURT.—You may retire.

Thereupon the jury retired to deliberate, and returned into court at 10 A. M. on March 17th, 1925, and announced that they had agreed upon a verdict, and that their verdict was that they found the defendant guilty as charged in the indictment; to which verdict said defendant then and there duly excepted.

The defendant was thereupon arraigned for judgment and said defendant then and there moved for a new trial upon all of the statutory grounds, and the Court announced that said defendant was granted the right to thereafter file a written motion for a new trial in conformity with said motion so made in open court.

Thereupon said motion for a new trial as made and thereafter to be filed was by the Court, by its order duly given and made, denied to which ruling the defendant, then and there excepted.

Thereupon said defendant moved in arrest of judgment and applied for an order that no judgment be entered upon the said verdict against him, said motion and application being made upon all the statutory grounds, and the Court announced that said defendant was granted the right to thereafter file said motion so made in open court. [58]

Thereupon said motion in arrest of judgment as made and thereafter to be filed, was by an order of said Court, duly given and made, then and there denied, to which ruling and order said defendant then and there duly excepted.

Thereupon said Court pronounced judgment and sentence as follows:

Said defendant was sentenced to imprisonment for five years in the United States Penitentiary at Leavenworth, Kansas.

That said defendant hereby presents the foregoing as his bill of exceptions herein, and respectfully requests that the same be allowed, signed and sealed and made a part of the record in this case.

Dated, March 26th, 1925.

DAVID PEARLMAN,
Defendant.
EDWARD A. CUNHA,
Attorney for Defendant [59]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 11,782.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DAVID PEARLMAN,
Defendant.

NOTICE OF PRESENTATION OF PROPOSED BILL OF EXCEPTIONS.

To Sterling Carr, United States Attorney, and Grove L. Fink, Assistant United States Attorney:

You will please take notice that the foregoing constitutes and is the proposed bill of exceptions of the defendant in the above-entitled cause, and the

said defendant will apply to the said Court to allow said bill of exceptions and to sign and seal the same as the bill of exceptions herein.

Dated: March 26, 1925.

EDWARD A. CUNHA,
Attorney for Defendant. [60]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 11,782.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DAVID PEARLMAN,
Defendant.

STIPULATION RE BILL OF EXCEPTIONS.

It is hereby stipulated and agreed that the foregoing bill of exceptions is correct and contains all the pertinent evidence adduced at the trial of said cause, and all other proceedings herein, and that the same may be signed, settled, allowed and sealed by the Court.

Dated April 2, 1925.

STERLING CARR,
United States Attorney.
GROVE J. FINK,
Asst. U. S. Atty.
EDWARD A. CUNHA,
Attorney for Defendant. [61]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 11,782.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID PEARLMAN,

Defendant.

ORDER SETTLING BILL OF EXCEPTIONS.

This bill of exceptions having been duly presented to the Court within the time allowed by law and the rules of the Court and within the time extended by the Court by orders duly and regularly made, contains all the evidence and other proceedings in said cause and is now signed, sealed and made a part of the records in this case, and is allowed as correct, and its accuracy is hereby attested:

Dated April 2, 1925.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Apr. 2, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [62]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 11,782.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID PEARLMAN,

Defendant.

PETITION FOR WRIT OF ERROR AND SUPERSEDEAS.

Now comes David Pearlman, defendant herein, by Edward A. Cunha, Esq., his attorney, and says that on the 17th day of March, 1925, this Court rendered judgment herein against the defendant in which judgment and the proceedings had prior thereto in this cause, certain errors were permitted to the prejudice of the defendant all of which errors will more fully appear from the assignment of errors which is filed with this petition.

WHEREFORE, the defendant prays that writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors complained of, and that a transcript of the record in this cause, duly authenticated, may be sent to the Circuit Court of Appeals, aforesaid, and that this defendant be awarded a *supersedeas* upon said judgment and all necessary and proper process including bail.

Dated April 22, 1925.

EDWARD A. CUNHA,
Attorney for Defendant. [63]

[Endorsed]: Rec. a copy Apr. 22, 1925.
STERLING CARR,
U. S. Atty.

Filed Apr. 22, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [64]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 11,782.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DAVID PEARLMAN,
Defendant.

ASSIGNMENT OF ERRORS.

David Pearlman, defendant in the above-entitled cause and plaintiff in error herein, having petitioned for an order from said Court permitting him to procure a writ of error to this court, directed from the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and sentence entered in said cause against said David Pearlman, now makes and files with his said petition the following assignment of errors herein upon

which he will rely in the prosecution of his writ of error in said cause, and upon which he will apply for a reversal of said judgment and sentence upon the said writ, and which said errors and each of them, are to the great detriment, injury and prejudice of said defendant, and in violation of the rights conferred upon him by law; and he says that in the record and proceedings in the above-entitled cause, upon the hearing and determination thereof in the District Court of the United States for the Northern District of California, there is manifest error in this to wit:

1. The Court erred in not instructing the jury to [65] acquit said defendant at the conclusion of the presentation of the case for the Government and of all of the evidence for the Government against said defendant. The evidence was insufficient to establish the allegations of the indictment or to convict said defendant and plaintiff in error, particularly in that it was not proven or established that the automobile in question and referred to in the indictment was stolen, and for the further reason that it was not proven or established that the said automobile was transported or driven or taken any place, or from state to state by said defendant. There was no proof that the automobile named in the indictment ever had an owner, or that anyone other than said defendant was the owner of said automobile, or that the owner if any, of said automobile did not consent to the taking of the same by said defendant; there was no proof of a larceny or the stealing of said automobile by anyone; the

only evidence covering the matters referred to in this paragraph consisted of alleged statements by the defendant and this evidence was incompetent and hearsay, because it was an attempt on the part of the Government to establish the *corpus delicti* of the offense alone by the admissions and statements of the defendant, when no other evidence had been introduced or was later introduced to establish the *corpus delicti.* The defendant and plaintiff in error raised the various questions herein pointed out by appropriate and timely exceptions to the introduction of the evidence of the Government and by appropriate and timely motions to strike out the evidence of the Government and by a motion for a directed verdict of not guilty, which said motion for a directed verdict was made at the conclusion of the Government's case, and to the Court's orders overruling defendant's [66] objections to the introduction of said testimony and denying said motions defendant and plaintiff in error duly excepted.

2. The Court erred in overruling and denying the motion for a new trial made by said defendant.

3. The Court erred in overruling and denying the motion in arrest of judgment made by said defendant.

4. The Court erred in denying the motion of said defendant to strike out certain testimony of the witnesses for the Government, which said motion was made at the conclusion of the case of the Government upon said trial.

5. The Court erred in permitting the witness S. J. Adams to testify, over the objection and exception of the defendant to certain statements made by the defendant, the question being as follows:

> "Q. Now will you relate to the court and to the jury as near as you now remember it, Mr. Adams, the conversation as it relates to the matter in question?"

6. The Court erred in denying defendant's motion to strike out certain testimony of said witness, Adams, which said motion and the exception to the ruling of the Court is as follows:

"Mr. CUNHA.—Now if your Honor please, keeping in mind that perhaps your Honor will direct the order of proof, I make a motion that *that* the testimony of this witness in which he states that the defendant told him that he had driven the car across the continent, anything with regard to driving the car, be stricken from the record on the ground it is immaterial, irrelevant and incompetent, and an attempt to prove the *corpus delicti* in this case by a confession or a statement of the defendant. I take it, if your Honor please, that you have the discretion as to the order of proof, but to [67] prove the *corpus* of the offense by admissions or statements of the defendant, I think it will be conceded it is beyond the law and is an invasion of the rights of this defendant. That is the point that we make, if your Honor please, that finally in this case the *corpus delicti* must be proved—

The COURT.—I do not want any argument; just state the point fully.

Mr. CUNHA.—We base our motion to strike out all of the testimony given by the witness on all of the grounds heretofore stated.

The COURT.—Motion denied.

Mr. CUNHA.—Exception."

7. The Court erred in permitting the said witness, Adams, to testify, over the objection and exception of the defendant, to certain statements made by the defendant, the question being as follows:

Q. What was the date of the purchase, the date that the defendant told you he purchased the car in the city of New York, if you remember?

Mr. CUNHA.—We object to that upon all the grounds heretofore stated, and upon the ground it is immaterial, irrelevant, and incompetent, calls for hearsay testimony, on the further ground that no foundation for the evidence has been offered or introduced, upon the further ground that all of this testimony with regard to conversations with the defendant or conduct of the defendant with regard to the bill of sale and otherwise in connection with this automobile is merely an attempt to prove the *corpus delicti* in this case by admissions from the defendant or statements from the defendant either by conduct or by actual verbal statements, and it is incompetent. [68]

The COURT.—Overruled.

Mr. CUNHA.—Exception.

The COURT.—You have several times quite fully stated your objection. It will save time if it is understood or that it be stipulated that your objection goes to the testimony of this witness concerning

the conversation or statements made by the defendant to him, and also with regard to anything having to do with bills of sale or anything else about that machine.

Mr. CUNHA.—And may we have our exception?

The COURT.—I am willing that you should.

8. The Court erred in allowing said witness, Adams, to testify, over the objection and exception of the defendant, to certain statements of the defendant, the question being as follows:

"Q. Did he tell you what date he arrived here—go ahead with your story?"

9. The Court erred in permitting the witness, Adams, over the objection and exception of the defendant, to testify to the contents of a certain bill of sale, the objection of the defendant being based upon the ground, among others, that the evidence introduced was not the best evidence, some of the said questions being as follows:

"Q. Now referring again to the bill of sale to which you testified I will renew the question that I withdrew, do you now remember where the bill of sale was dated?"

"Q. Do you remember about the date shown on that bill of sale?"

"Q. Do you remember the name of the man who signed it?" [69]

The Government laid no foundation for the introduction of secondary evidence in this connection.

10. The Court erred in permitting said witness, Adams, to testify, over the objection and exception of the defendant, to certain matters concerning the

number of the automobile in question, the said question being as follows:

"Q. In your examination of the motor block or wherever the number happens to be, did you notice any change or attempt to change the number?"

11. The Court erred in permitting the witness, M. L. Britt, to testify, over the objection and exception of the defendant, to certain statements made by the defendant, the questions being as follows:

"Q. Will you state to the Court and jury as near as you remember just the conversation at that time as it relates to this change here before this Court and jury?"

"Q. What did he say?"

"Q. Was there any conversation concerning the car, the Cadillac Sedan which was in the *possession Leong* when you first saw it?"

"Q. Did he tell you what he paid for it?"

12. The Court erred in permitting the said witness, Britt, to testify, over the objection and exception of the defendant, to certain statements made by the defendant concerning his movements, the said question being as follows:

"Q. What if anything was said by him concerning his method of going to San Francisco?"

This was clearly an attempt on the part of the [70] Government to prove the *corpus delicti* by the statements of the defendant, unsupported by any other testimony.

13. The Court erred in denying the motion of the defendant, to strike out the testimony of the said witness, Britt, which said motion was made at

the conclusion of the testimony of said witness, the said motion and ruling being as follows:

"Mr. CUNHA.—We make a motion that all of the testimony of this witness upon all the grounds heretofore urged be stricken out, especially objecting to the admission of statements in evidence of this defendant and conduct of this defendant, and ask that they all be stricken from the record upon all the grounds heretofore urged.

The COURT.—Motion *died.*

Mr. CUNHA.—Exception."

14. The Court erred in permitting the witness, William F. Milliken, to testify, over the objection and exception of the defendant, to certain matters with regard to the number of the automobile in question, the question being as follows:

"Q. Will you describe to the Court and jury what you saw, how that number appeared?"

15. The Court erred in permitting said witness, Milliken, to testify, over the objection and exception of the defendant, to certain statements made by said defendant, and to certain conversations with said defendant, the questions being as follows:

"Q. Will you state as nearly as you now remember just what that conversation was?"

"Q. What else?" [71]

"Q. Did he tell you he came across the country from New York?"

"Q. In what?"

16. The Court erred in making an order, over the objection of the defendant that the witnesses for the Government be allowed to testify in narra-

tive form, and that the defendant be denied the right to make any objection or motion until the narrative of the witness was completed, the said ruling and objection being as follows:

"The COURT.—Now, Counsel, in the beginning of this examination of witnesses I sustained objections that were made by you to permitting witnesses to tell their story to the jury in narrative form, so that you might have the opportunity of making objections when questions were asked and before the answers were made. Now, I thought that would give you an opportunity to interpose what objections you have a right to interpose in protecting the rights of your client. It seems we are going to use up a lot of time if I permit the examination to go ahead in that manner, so I think that, for the purpose of saving time and expediting this trial I will permit the witness to answer the questions that may be propounded by the attorney for the Government in narrative form, and that when the witness has finished his answer you may then interpose such motions and such objections as you see fit. Now, do not interrupt the witness until he has finished his answer in narrative form.

Mr. CUNHA.—To which ruling of the Court we respectfully take an exception.

The COURT.—You have objected to every statement, but do not interrupt this witness until he is through, and [72] then make all the objections you want to. Now, Mr. Fink, frame a question such as you think you would like to ask this witness, and we will proceed."

This occurred during the testimony of the witness, J. W. Ehrlich, and was clearly prejudicial to the defendant in that said ruling denied to the defendant the right to proceed with his trial in accordance with the law, and the ordinary rules of procedure. The ruling was clearly an invasion of the rights of the defendant, and prejudiced the defendant in the eyes of the jury in that it created an impression with the jury that the conduct of the defendant, and his counsel, in making proper objections to the testimony offered by the Government, was an indication of guilt on the part of the defendant and was improper conduct on the part of the defendant.

17. The Court erred in permitting the witnesses, S. J. Adams, over the objection and exception of the defendant, to testify to certain statements made by the defendant the questions being as follows:

"Q. Do you recall a conversation with this defendant, in which the defendant told you what he knew about how he got the car?

Mr. CUNHA.—I object to that upon all of the grounds heretofore urged as to admissions and statements of this defendant, and upon the further ground it is leading and suggestive.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Do you refer to a conversation as to where he claimed he bought the car? [73]

Mr. FINK.—Yes. You have already testified to that? A. Yes.

Q. Did you have a later conversation in which he stated what he found out about the car?

A. Yes, he said he did not know it was a stolen car until a few days after he left New York.

Q. What did he say about his knowledge at that time?

Mr. CUNHA.—The same objection.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. Well, I cannot exactly say.

Mr. FINK.—Q. Did he say to you, or did he not say to you that he knew it was a stolen car?

A. Yes.

Mr. CUNHA.—Just a moment, I object to that on all of the grounds heretofore urged, and on the ground it calls for the mere conclusion and opinion of the witness, and not binding upon this defendant, no foundation laid, hearsay, and on the further ground it is leading and suggestive.

The COURT.—Overruled.

Mr. CUNHA.—Exception.

A. As I said before, he said that he did not know it was a stolen car until he left New York.

Mr. FINK.—That is all.

Mr. CUNHA.—No questions."

The foregoing is the only testimony of the record to the effect that the automobile in question was stolen. In substance this testimony is clearly hearsay, because at best it is merely a statement of what the defendant had learned. It does not constitute competent evidence that the automobile was stolen and is clearly an attempt to prove the [74]

corpus delicti, by the statements of the defendant, unsupported by any other evidence. The Government failed to produce as a witness anyone who claimed to be the owner of the automobile in question, and did not account for the failure to produce such a witness, and the lack of such testimony, and the failure to produce such witness cannot be made up for by hearsay and incompetent testimony consisting merely of statements by the defendant, for the introduction of which no foundation was laid.

18. The Court erred over the objection and exception of the defendant in denying the motion of said defendant to strike out the testimony of the witnesses for the Government which said motion was made at the conclusion of the testimony for the Government and is as follows:

"Mr. CUNHA.—If your Honor please, at this time I make a motion now that all of the testimony of the witnesses for the Government, and particularly the testimony of the defendant, and conduct on the part of the defendant, that all that testimony be stricken out, upon the ground that no proper foundation has been laid for the testimony, on the ground that there is nothing connected up, and the further ground it is immaterial, irrelevant and incompetent, hearsay, and not binding upon the defendant, upon the ground that it has been merely an attempt to prove the corpus of this offense, the *corpus delicti* by admissions, statements of the defendant, and by conduct on the part of the defendant, which must come in under the head of admis-

sions. I make a motion that all of that testimony be stricken out on all of the grounds heretofore stated, and upon all the grounds urged at the time the testimony was objected to.

The COURT.—Denied.

Mr. CUNHA.—Exception." [75]

19. The Court erred in instructing the jury, over the objection and exception of the defendant as follows:

"The COURT.—Gentlemen, the officer in charge of you has indicated to me that you wish to ask a question.

The FOREMAN.—Yes, your Honor, we do desire to ask you a question about whether or not the defendant should have had knowledge that this was a stolen car.

The COURT.—The language of the indictment, gentlemen, is quite plain. The indictment charges that David Pearlman, on or about July 28th, 1922, in violation of Section 3 of the National Motor Vehicle Act of October 29, 1919, did unlawfully, wilfully, knowingly and feloniously transport and cause to be transported in interstate commerce, to wit: from the city of New York, in the State of New York, to San Francisco, in the State of California, a certain motor vehicle, to wit: a Cadillac automobile, motor No. 18,664, said defendant then and there well knowing that, at the time of said transportation, said motor vehicle had been stolen.

Now, the charge in the indictment is based upon the provisions of the statute. The indictment contains the same language that the statute contains,

that is to say, the same language with reference to transportation and with reference to knowledge. My recollection of the provisions of the statute is that it must be with guilty knowledge, that is to say, the transportation must take place, or must be made by the defendant, the defendant then and there well knowing that at the time of the transportation the motor vehicle had been stolen.

The clerk has handed me the Federal Code, and, referring to that, I find that the language is 'knowing the same to have been stolen.' Those words are in the statute, [76] 'knowing the same to have been stolen.' Does that answer your question?

The FOREMAN.—I think it answers it partly. Must he have had knowledge on the date of July 28th?

The COURT.—On or about that date. My view of that would be that if an offense were committed it might be said to be a continuing offense, that is to say, that he might or might not have known that the automobile had been stolen when he left the State of New York. I take it that if he thereafter had learned that the automobile had been stolen after he left New York and he continued on his way across the country through other States and came to California, I should say that, if you find that that was the evidence, that that would be sufficient to sustain a conviction. Is that clear?

Mr. CUNHA.—On behalf of the defendant, if your Honor please, we except to the instruction just given by the court."

These instructions are erroneous because the defendant was charged specifically in the indictment with transporting the automobile from New York to San Francisco, also when specifically questioned by the jury it became the particular duty of the Court, as it was already the Court's duty to instruct the jury that the burden was upon the Government to prove that the automobile was stolen, and no such instruction was given at any time by the Court in response to the Court's obligation to properly define the elements of the crime in question and the necessary proof in support thereof. [77]

STATEMENTS OF FULL SUBSTANCE OF TESTIMONY ADMITTED OVER THE OBJECTION AND EXCEPTION OF THE DEFENDANT AND PLAINTIFF IN ERROR, AS HERETOFORE REFERRED TO AND POINTED OUT HEREIN IN DEFEDANT'S ASSIGNMENT OF ERROR.

ASSIGNMENT OF ERROR No. 5.

The statements of the defendant testified to in connection with and as pointed out by this assignment is in substance as follows:

"Mr. Pearlman stated that he had purchased the car in New York City from a second-hand auto market at Third Avenue and Thirteenth Street, and that he did not know the seller's name. That he drove the car direct to San Francisco from New York with the exception of a stop over at Salt Lake. He had a bill of sale for the car that was issued in Los Angeles and was made out to a man

by the name of Lewis; some second-hand auto market there.

ASSIGNMENT OF ERROR No. 6.

The testimony of the witness, Adams, which should have been stricken out as claimed by this assignment of error is the testimony immediately given above under assignment of error No. 5.

ASSIGNMENT OF ERROR Nos. 7, 8, 9, 10.

The statements of the defendant testified to in connection with, and as pointed out by these assignments of error is as follows:

"The defendant told me he purchased the car in the City of New York on July 28th; that he left New York the latter part of July and got to San Francisco about September [78] 6th. The bill of sale to which I testified was dated Los Angeles the 14th of August, and the heading on the stationery was "Lewis." In my examination of the motor block I noticed a change or attempt to change the number."

ASSIGNMENT OF ERROR Nos. 11 and 12.

The statements of the defendant testified to and over the objection and exception of the defendant as pointed out in these assignments of error is as follows:

"The defendant was asked what had become of the $2,100.00 which had been given him by the chinaman and he said he had owed a party $1,-500.00 and had forwarded it that day, September 6th, and he was in possession of $600.00 when we searched him. The defendant admitted he had

purchased the Cadillac Sedan in New York City from in front of Browns' Auction House and said he paid the sum of $1,000.00 for it. The defendant stated he had come out from New York as far as Salt Lake City and had gone from Salt Lake City to Los Angeles via one of the trails."

ASSIGNMENT OF ERROR No. 13.

The testimony which should have been stricken out as indicated in this assignment of error is the testimony quoted immediately above in connection with assignment of error Numbers 11 and 12.

ASSIGNMENT OF ERROR Nos. 14 and 15.

The testimony admitted over the objection and exception of the defendant as indicated and pointed out by these assignments of error is as follows:

"It was very apparent that the number had been changed; there was no series letter." "The defendant stated [79] that he had purchased the car for $1,000.00 in New York and had driven it through to Salt Lake City and then to Los Angeles where he had registered it and then to San Francisco. I asked the defendant if he knew the car was stolen and he would not make much of a further statement. He said he had driven the car as far as Salt Lake City and then turned South and then went into Los Angeles, in this particular Cadillac Sedan."

ASSIGNMENT OF ERROR No. 18.

The testimony which should have been stricken out as indicated by this assignment of error con-

stituted and is all of the testimony heretofore referred to and quoted and set forth in substance in connection with all the foregoing assignments of error.

A careful perusal and scrutiny of all of the testimony in the record will show that the only testimony offered to prove that the automobile was transported or driven or conveyed by the defendant, consisted of alleged statements made by the defendant and testified to by Government witnesses; and these statements of the defendant are absolutely unsupported by any other competent testimony; and with regard to alleged changes made in connection with the number of the automobile, or otherwise, there is absolutely no testimony as to when these changes were made and nothing to indicate that they were made by the defendant. The fact that the automobile in question was stolen and that it was actually transported by the defendant were essential parts of the *corpus delicti* to be established, and there is no attempt to establish these elements except by statements of [80] the defendant, and therefore, the proof in this connection is absolutely insufficient, and the testimony covering statements of the defendant should have been rejected by the court under the objections of the defendant.

WHEREFORE, said defendant, and plaintiff in error, prays that the judgment and sentence herein may be reversed, and that he may be restored to all things that he has lost thereby, and that he may be awarded a new trial.

Dated April 22, 1925.

EDWARD A CUNHA,
Attorney for Defendant and Plaintiff in Error.

[Endorsed]: Rcd. a copy Apr. 22, 1925.
STERLING CARR,
U. S. Atty.

Filed Apr. 22, 1925. Walter B. Maling, Clerk. By. C. W. Calbreath, Deputy Clerk. [81]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 11,782.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DAVID PEARLMAN,
Defendant.

ORDER ALLOWING WRIT OF ERROR AND SUPERSEDEAS.

The writ of error and the supersedeas herein prayed for by David Pearlman, defendant and plaintiff in error, pending the decision upon said writ of error, is hereby allowed and the defendant is admitted to bail upon the writ of error in the sum of Five Thousand Dollars.

The bond for costs on the writ of error is hereby fixed at Two Hundred Fifty and No. 100 ($250.00) Dollars.

Dated 22d day of April, 1925.

A. F. St. SURE,
United States District Judge.

[Endorsed]: Rcd. a copy 4–22–1925.

STERLING CARR,
U. S. Atty.

Filed Apr. 22, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [82]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT ON WRIT OF ERROR.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 82 pages, numbered from 1 to 82, inclusive, contain a full, true and correct transcript of the records and proceedings, in the case of United States vs. David Pearlman, No. 11,782, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to the praecipe for transcript (copy of which is embodied herein).

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of thirty-two dollars and fifty-five cents ($32.55) and that the same has been paid to me by the plaintiff in error herein.

Annexed hereto are the original writ of error, return to writ of error, and original citation on writ of error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 29th day of April, A. D. 1925.

[Seal] WALTER B. MALING,
Clerk,
By C. M. Taylor,
Deputy Clerk. [83]

WRIT OF ERROR.

United States of America.—ss.

The President of the United States of America,
To the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETINGS:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between United States of America, defendant in error, a manifest error hath happened, to the great damage of the said David Pearlman, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date

hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 22d day of April, in the year of our Lord one thousand nine hundred and twenty-five.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By C. W. Calbreath,
Deputy Clerk.

Allowed by

A. F. St. SURE,
United States District Judge. [84]

Rec'd a copy, 4–22–25.

STERLING CARR,
U. S. Atty.

[Endorsed]: No. 11782. United States District Court for the Northern District of California, First Division. United States of America, Plaintiff in Error, vs. David Pearlman, Defendant in Error. Writ of Error. Filed Apr. 22, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

RETURN TO WRIT OF ERROR.

The answer of the Judges of the United States District Court, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 29th day of April, A. D. 1925, duly lodged in the case in this court for the within named defendant in error.

By the Court.

[Seal] WALTER B. MALING,

Clerk, U. S. District Court, Northern Dist. of California.

By C. M. Taylor,
Deputy Clerk. [85]

CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States, to the United States of America, and to Sterling Carr, Esq., United States Attorney, and to Grove J. Fink, Esq., and Thomas J. Sheridan, Esq., Assistants to the United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a

writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, wherein David Pearlman, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE, United States District Judge for the Northern District of California, this 22d day of April, A. D. 1925.

A. F. ST. SURE,
United States District Judge.

Recd. a copy 4/22/25.

STERLING CARR,
U. S. Atty.

[Endorsed]: No. 11,782. United States District Court for the Northern District of California. United States of America, Plaintiff in Error, vs. David Pearlman, Defendant in Error. Citation on Writ of Error. Filed Apr. 22, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [86]

[Endorsed]: No. 4585. United States Circuit Court of Appeals for the Ninth Circuit. David Pearlman, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division

of the United States District Court of the Northern District of California, First Division.

Received April 29, 1925.

F. D. MONCKTON,
Clerk.

Filed May 11, 1925.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.